

City of Detroit


CITY COUNCIL

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TO: Council Member Kwame Kenyatta
Chair, Internal Operations Committee

FROM: David Whitaker 
Research & Analysis Division Staff

DATE: July 15, 2008

**RE: RECONSIDERATION OF THE VOTE TO CREATE A DETROIT
TUNNEL AUTHORITY**

On June 30, 2008, at an Adjourned Session, the Detroit City Council voted against the creation of a Detroit Tunnel Authority. This action was the culmination of weeks of discussion at the Council table with officials from the City's Administration and was the revival of a proposal that was first brought to the Council over one year earlier in connection with a lease that would net the City an immediate \$75 million and would help plug a gaping hole in the City's 2007-2008 Budget.

The City Council was repeatedly urged by the Deputy Mayor and others in the Administration during the 2008-2009 Budget deliberations to approve a revised proposal to sell the Detroit-Windsor Tunnel in order to avert massive layoffs of City workers. Your Honorable Body, after considerable discussion and the failure to receive a completed transactional agreement and financial information, decided not to rely on funds received from a tunnel transaction and voted instead for the authorization of fiscal stabilization bonds in the 2008-09 Budget. The Mayor vetoed this action and the Council then overrode that veto.

In the days leading up to City Council's June 30th Adjourned Session the City's Administration continued to push for Council's acceptance of the proposal and implored Your Honorable Body to consider simply the creation of a Tunnel Authority, before July 1, 2008, the start of a new fiscal year. This action was necessary in order to book the proceeds of the transaction in the prior fiscal year. No Authority members would be seated, but it was explained that the resolution by Council to approve the creation of the Authority would permit the Administration to continue negotiations with Windsor and stave off the need to immediate lay-off approximately 1,300 employees. Representatives from the Mayor's Office further assured Your Honorable Body that if the additional

information needed for a complete and full determination of the worthiness of the proposal was not forthcoming, the Authority would automatically dissolve in 120 days with no further action. The matter was subsequently voted down during that session.

The following day, at the Council's Formal Session, on July 1, 2008, Council Member Collins moved to reconsider the previous day's tunnel vote. Staff from the Research & Analysis Division, acting as parliamentarians, advised the Council that a reconsideration was improper because it was an attempt to undue an action that had budgetary implications for a fiscal year that had just ended. It was suggested instead that the motion be re-introduced by the Administration and walked on under New Business. Council Member Collins disagreed because the resolution being voted on did not include language specific to the budget. After a short discussion the body agreed to vote on the motion to reconsider, which was then approved. This was followed by a second vote on the creation of a Tunnel Authority that was also approved. Following the vote, Council Member Kenyatta asked the Research Division to provide a written report that explained our position on this issue. This report is in response to that request.

Council's rules provide that "the most recent edition of Robert's Rules of Order will govern the procedures of the Council in all situations not otherwise provided for by statute, charter, ordinance or the adopted rules of this body."¹ Presently Council's rules differ from Robert's Rules on reconsideration in only one aspect, Council rules provide that *any* member may move for reconsideration of a vote², not just those on the prevailing side.

The purpose of parliamentary procedure is to promote efficient meetings and facilitate the orderly transaction of business. Robert's Rules places other restrictions on the motion to reconsider, including votes to which it may be applied. In Chapter IX, §37 *Reconsider*, pp 307-308 it is stated: (The motion to reconsider) can be applied to the vote on any motion except: (a) a motion which can be renewed; (b) an affirmative vote whose provisions have been partly carried out; (c) an affirmative vote in the nature of a contract when the party to the contract has been notified of the outcome; (d) **any vote which has caused something to be done that it is impossible to undo**; (e) a vote on a motion to reconsider, or (f) **when practically the same result as desired can be obtained by some other parliamentary motion**. Both items (d) and (f) appear to apply to the situation described above. (Emphasis added)

The issue was not simply the creation of a Tunnel Authority but rather the issue was presented as the creation of a Tunnel Authority **prior** to the close of the fiscal year. While it is true that the language in the resolution made no reference to any deadline or resulting budgetary impact, it is also true that the only reasons stated by the Mayor's staff for insisting upon immediate approval of the resolution was in order to make the June 30, 2008 close of the fiscal year. When Council inquired during the discussion as to why they could not wait until all documents had been received before voting, they were informed that after June 30th it would be too late to include the anticipated revenue from

¹ *Rules and Order of Business for the Detroit City Council*, Rule 10.14 Parliamentary Procedure

² Rule 10.14.1, id.

the deal on the books for 2007-2008 and all negotiations to complete the agreement would effectively end. It was always presented as a budget issue for the 2007-08 fiscal year. It was always presented as having budgetary implications.

If the close of the fiscal year was a self-imposed deadline by the Administration then the entire issue becomes moot. However, because the significance of a June 30th deadline was emphasized, the resolution was not approved in a timely manner. Therefore the purpose, which was to acquire approval before the end of the fiscal year and reflect that approval on the City's books, did not occur and the public records of the Council meeting reflect that disapproval.

When the Formal Session convened on Tuesday, July 1, 2008 it was the first Formal Session of a new fiscal year. Reconsideration in a new fiscal year cannot change the effect of a vote taken in a previous fiscal year that was also meant to accomplish something in that previous fiscal year; there is no going back in time. The purpose of the vote had already been defeated. The action that resulted was the budget year ended without the tunnel money to fill the deficit. The 2007-2008 fiscal year was over and reconsideration of the vote taken would not roll back time as if the vote had initially passed.

Once again, if the June 30th deadline was merely a self-imposed date set by the Administration and had no significance then reconsideration, while moot, was an appropriate motion. If the Administration can continue to make financial decisions and include items on the books once a fiscal year has ended then reconsideration was in order. But the circumstances under which the original vote was taken placed heavy emphasis on it being imperative that approval be obtained by a date specific in order to avoid certain other actions. Therefore, the advice of the Research & Analysis Division (RAD) parliamentarians that the issue should have been re-introduced by the Administration was most appropriate.

Given the significance of this issue RAD also contacted Eleanor (Coco) Siewert, registered parliamentarian, who opined that because the purpose for which the action was being taken was not met, then the resolution was not voted on in a timely manner, thus, a parliamentary motion other than reconsideration was in order.